UNITED STATES DISTRICT COURT
DISTRICT OF NORTH DAKOTA

Richard A. Lofgren,

Civil No.: 4:15-cv-083

Plaintiff,

vs.

BNSF Railway Company,
a Delaware corporation

Defendant.

COMPLAINT AND DEMAND FOR JURY TRIAL

COMES NOW the Plaintiff, Richard A. Lofgren, and for his cause of action against Defendant BNSF Railway Company (BNSF), a Delaware corporation, states and alleges as follows:

PRELIMINARY STATEMENT

1. This is an action brought by Plaintiff against BNSF pursuant to the Federal Employers' Liability Act (FELA), 45 U.S.C. §§ 51-60, to recover damages for personal injuries suffered while working as a conductor for Defendant on August 3, 2012, and said injuries were suffered in the scope and course of his employment.

PARTIES

2. That at all times material herein, Plaintiff was in the employ of BNSF working as a conductor, and at the time of the occurrence of the incident herein, all or part of Plaintiff's duties were in the furtherance of BNSF business of interstate commerce.

3. That at all times material herein, BNSF was a corporation duly organized and existing under the laws of the state of Delaware, and was duly licensed and empowered to operate a system of railroads as a common carrier of freight for hire in and through the state of North Dakota.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this matter based upon the FELA, 45 U.S.C. §§ 51-56. Therefore, this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331, which confers federal jurisdiction over civil actions arising under the laws of the United States.

5. This Court has general personal jurisdiction over BNSF since it is licensed to do business in the North Dakota and transacts business in the state creating sufficient minimum contacts with the state to permit this Court to exercise jurisdiction over it.

6. This Court has venue to hear the case pursuant to 45 U.S.C. § 56, which allows bringing a FELA action in a court where the cause of action arose or where the defendant is doing business.

7. This action is timely commenced pursuant to 45 U.S.C. § 56.

FACTS

8. That at all time material herein, Plaintiff was working in the course and scope of his employment for BNSF as a conductor, and at the time of the incident described below, all or part of Plaintiff's duties were in the furtherance of BNSF's business of interstate commerce.

9. That on or about August 3, 2012, Plaintiff was in the course and scope of his employment working as a conductor on BNSF's train at or near milepost 237.8 near Oswego, Montana. As he dismounted BNSF's locomotive engine to perform a required roll-by inspection

of another BNSF's train, he stepped into hole obscured and covered by high, overgrown vegetation alongside the track, and as a result, he was caused to suffer severe and permanent injuries and be otherwise damaged. As a result of the incident, Plaintiff was caused to sustain injuries as hereinafter set forth.

COUNT ONE

Plaintiff realleges paragraphs 1 through 9 as set forth at length and in detail herein.

10. That the injuries and damages sustained by Plaintiff were caused, in whole or in party, by reason of Defendant's violation of the FELA, and as a consequence of Defendant's negligence in:

A. Failing to provide Plaintiff with a reasonably safe place to work;

B. Failing to warn Plaintiff of the hazard;

C. Failing and neglecting to properly inspect, maintain and repair walkways and area where Plaintiff was expected to perform trackside duties;

D. Failing and neglecting to implement and enforce safe work methods;

E. Failing to have an adequate vegetation control plan and/or enforcing it; and

F. Other acts of negligence as shown in discovery of this case.

11. That as a result of the incident, Plaintiff was injured, suffered pain in the past and will suffer pain in the future; has incurred expenses for medical treatment, and will incur further like expenses in the future; has suffered loss of earnings and loss of future earning capacity; has suffered loss of his enjoyment of life; and has suffered permanent injury and disability, all to his injury and damage.

COUNT TWO

Plaintiff realleges paragraphs 1 through 11 as set forth at length and in detail herein.

12. The acts and omissions of BNSF described above also constitute one or more violations of the Code of Federal Regulations, including but not limited to 49 C.F.R. § 213.37(c), which constitutes strict liability.

13. That the injuries and damages sustained by Plaintiff were caused, in whole or in part, by Defendant's violations of the Code of Federal Regulations.

14. That as a result of the incident, Plaintiff was injured, suffered pain in the past and will suffer pain in the future; has incurred expenses for medical treatment, and will incur further like expenses in the future; has suffered loss of earnings and loss of future earning capacity; has suffered loss of his enjoyment of life; and has suffered permanent injury and disability, all to his injury and damage.

WHEREFORE, Plaintiff, Richard A. Lofgren, prays judgment against the above named Defendant in an amount to be determined as reasonable compensation for all the injuries and damages he has suffered, together with interest thereon as provided by law, and for his costs and disbursements herein incurred, and for such other and further relief as the Court may deem just and appropriate.

PLAINTIFF DEMANDS TRIAL BY JURY.

HUNEGS, LeNEAVE & KVAS, P.A.

Dated: June 17, 2015

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